

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

BETTY L STUKERJURGEN

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 10B-UI-07832

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held July 19, 2010 in which the issue of whether the claimant was discharged for misconduct, or whether claimant voluntarily left for good cause attributable to the employer was to be determined. The administrative law judge's decision was issued July 20, 2010 that determined that the claimant was disqualified for voluntarily leaving work without good cause attributable to the employer.

At the hearing, the claimant indicated that she was already receiving unemployment insurance benefits and was concerned about scheduling of her part-time employment. (Tr. 3, lines 5-15) The administrative law judge's decision, however, did not address whether that prior employment was either part-time or full-time employment, which could have a bearing on the claimant's eligibility.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. There was no testimony elicited as to whether the claimant's prior employment was full-time or part-time. If it was full-time employment, then the court in Welch v. Iowa Department of Job Service, 421 N.W.2d 150 (Iowa App. 1988) held that a total disqualification could only result from quitting the primary or regular (full-time) employer (of which there is no such evidence). To excuse a claimant's full-time employer from which [she] was separated and not disqualified in the first place, would result in a windfall to that employer should the subsequent part-time employer be held liable for benefits after a claimant's subsequent separation.

In addition, 871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, decision of the job service representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the account of the employer with which the individual requalified, transferred to the balancing account, or remain with the employer from which they were earned.

Since we do not know the answer to this question, the Board must remand this matter for the taking of additional evidence to determine whether the claimant's quitting of part-time employment falls within the meaning of Welch, *supra*.

DECISION:

The decision of the administrative law judge dated July 20, 2010 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/kk